



**Order under Section 29 and 30
Residential Tenancies Act, 2006**

Citation: Stermotic v Alimari Group, 2023 ONLTB 42161

Date: 2023-06-14

File Number: LTB-T-006825-22

In the matter of: 34, 815 MACODRUM DR
BROCKVILLE ON K6V6P6

Between: Aurora Brianne Hillier Tenant
Marcel Michal Stermotic

And

Alimari Group Landlord

Aurora Brianne Hillier and Marcel Michal Stermotic (the 'Tenants') applied for an order determining that Alimari Group (the 'Landlord') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards; and, for an order determining that the Landlord or the Landlord's superintendent/agent harassed, obstructed, coerced, threatened or interfered with them, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlords are obligated to supply under the tenancy agreement.

This application was heard by videoconference on April 5, 2023.

The Tenants, the Landlord's agent Amin Abdul-Fattah and the Landlord's representative T. Jacquard attended the hearing.

Determinations:

1. The Tenants' T6 Application was brought pursuant to s.29(1) [Residential Tenancies Act, 2006](#) (the 'Act'), and alleges the Landlord breached an obligation under s.20(1):

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards

2. In addition to the T6 Application, the Tenants brought a T2 Application pursuant to s.29(1) of the Act, alleging the Landlord harassed, obstructed, coerced, threatened or interfered with them, and/or substantially interfered with their reasonable enjoyment, or with the reasonable supply of a vital service the Landlord is obligated to supply. Both applications were filed on February 6, 2022.

3. The Tenants signed a rental application for the rental unit in late November 2021 for a lease commencement date of January 1, 2022. In accordance with the Landlord's request, prior to move-in the Tenants paid a rental deposit in the amount of \$2800.00, comprising a 1st month's rent in the amount of \$1400.00, and a last month's rent in the amount of \$1400.00.
4. Section 2(1) of the Act provides that a tenancy agreement can be a written, oral or implied agreement. Notwithstanding the lack of a signed standard lease agreement, I find the parties had a meeting of the minds and had entered a valid tenancy to commence January 1, 2022.
5. The Tenant, Marcel Stermotic (MS) testified the Tenants took possession of the rental unit on January 1, 2022 and described the state of the property as being "unhabitable". The Tenants vacated the rental unit 10 days later. The Tenants' application thus alleges numerous issues with the condition of the rental unit, namely that the bathtub was unclean and contained a residue, the shower was slow to drain, there was mould, there were gaps and missing flooring around the vanity, there was a missing interior door and ceiling lighting, the unit was not painted and smelled of smoke.
6. At the hearing, MS testified as to the condition of the rental unit upon move in and produced pictures showing some light residue in the bathtub, bathroom floor tiles that do not entirely enclose the bathroom vanity; a picture of what appears to be mould on the lower wall beside the vanity; some stickers on the bathroom window and others areas showing general uncleanliness. MS testified the walls required painting as some visible patches of plaster could be seen on the light-coloured walls. Immediately upon move-in, the Tenants texted the Landlord's agent, advising, in part,

...we were expecting this place be more ready to move in....We've spent the last few hours trying to clean and still can't shower. The bleach is reacting with something in the tub making irritating fumes that are burning our eyes and airways and making green spots. Also theres no door to the room and loose wires which is not good for the cat. Also this ones kind my bad I didn't expect the rooms not having ceiling lights. There's still plaster all over wall and the windows are dirty.....We don't think living in this apartment as it is feasible as we have an animal and both work full time.

7. Following some exchanges between the parties, the Landlord's agent advised on January 2, 2022, as follows, "I do have someone on site that can finish stuff. He can do work during the day. He is reliable. We can get this all addressed", to which the Tenant responded:

Unfortunately, at this point in time we can not live in apartment that is being renovated and need an apartment that is ready to go. We were under the impression that the apartment would be more ready to move in....

8. MS described the property as constituting a "hazard" to his health, noting he has a mould allergy. At the time of touring the rental unit in November 2021, MS testified he was assured by the Landlord's agent the rental unit would be "renovated and ready to move-in". On cross-examination, he stated he interpreted such assurances to mean "painted and cleaned and at the minimum, no mould". Notwithstanding the Landlord's assurances in early January 2022 that the Tenants' concerns would be addressed, MS testified he did not have

confidence the Landlord would fix it properly and that it would take too long. The Tenants vacated the property on January 11, 2022. While there was discussion between the parties of a possible return of funds, I do not find there was an agreement as to a termination date of the tenancy.

9. The Tenants T2 and T6 applications both seek an abatement of \$2800, constituting the deposit paid to the Landlord and not returned to the Tenants, as well as moving expenses in the amount of \$1740.20.
10. At issue therefore in this application is whether the Landlord fundamentally breached their obligations under the lease agreement and consequently, frustrated the real purpose of the contract. Section 17 of the Residential Tenancies Act, 2006 (the "Act") is applicable to the current situation and provides that "... *the common law rules respecting the effect of a serious, substantial, or fundamental breach of a material covenant by one party to a contract on the obligation to perform of the other party apply with respect to tenancy agreements*".
11. The Landlord submits there were only small items/repairs that were required to be addressed upon move-in, and asserts the issues encountered by the Tenants do not warrant termination of the tenancy. Landlord's agent Amin Abdul- Fattah (AF) testified the Tenants chose the rental unit following a tour in late November 2021 and that some "touch ups" and work was undertaken thereafter, including installation of a new bathroom vanity cabinet. He acknowledged the rental unit remained vacant for approximately one month, allowing dust to accumulate in the meantime. AF further testified the alleged mould was sprayed and treated and that upon the Tenants vacating the rental unit on January 11, 2022, the property was immediately put on the market and rented for March 1, 2022.
12. The onus to prove the allegations in the application rests with the Tenants. Upon hearing all the evidence, I do not find the rental unit was "uninhabitable/unoccupiable" to the point of constituting a fundamental breach of the lease agreement. While not a requirement to prove the Tenants case, there was no evidence of the rental unit being found to be unfit for human habitation by an independent authority or enforcement agency and the Tenants did not produce any expert or medical reports in support of their purported allergies and/or submission the property constituted a serious hazard to their health.
13. Moreover, while it is clear there was a need for cleaning and additional preparation prior to the Tenants' arrival, I do not find the condition of the rental unit reached a level of severity entitling the Tenant to repudiate the agreement and immediately vacate the rental unit. While it is unfortunate the Landlord did not exercise greater due diligence in preparing the unit for the Tenants' arrival, the correspondence shows the Landlord was willing to attend at the rental unit to address the concerns raised in early January 2022. Ultimately, the Tenants made the decision to leave shortly after move-in and any necessary cleaning and preparation had to take place in their absence. For this reason, the Tenant's claim for a return of the deposit beyond January 11, 2022 and for moving expenses in the amount of \$1740.20 is denied.
14. As mentioned, I find the Landlord should have exercised greater due diligence in preparing the rental unit for the lease commencement date. The Tenants were coming from out of town, with the reasonable expectation the property would be in a ready and clean state.

The Tenants' enjoyment of the rental unit during the 11 days of occupancy was impacted because of the state of the rental unit. I therefore find the Landlord's failure to ensure the rental unit was cleaned and prepared for January 1, 2022 substantially interfered with the Tenants' reasonable enjoyment of the rental unit during their short period of occupancy. Moreover, I find the Landlord fell short of its obligation to ensure the property was in a good state of repair under section 20 of the Act during this time. Given the short period of time the Tenants resided in the rental unit and the disruption to ability to normally reside in the rental unit during this time, I am awarding the Tenants a 75% abatement for the 11-day period, in the amount of \$380.00.

It is ordered that:

1. The Landlord shall pay to the Tenants a rent abatement in the amount of \$380.00.
2. The Landlord shall also pay to the Tenants \$48.00 for the cost of filing the application.
3. The total amount the Landlord owes to the Tenants is \$428.00.
4. If the Landlord does not pay the Tenants the full amount owing by June 25, 2023, the Landlord will owe interest. This will be simple interest calculated from June 26, 2023 at 6.00% annually on the outstanding balance.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 14, 2023
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

15 Grosvenor St, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.